whether they were intended to have a prospective or retrospective operation. In this way the advanced position of the court in the principal case would be reached, and the practical results which have proved objectionable in the application of the general would be avoided.

PREFERENCES IN BANKRUPTCY BETWEEN PARTNERSHIP AND INDIVIDUAL CREDITORS.—Few rules in the law of bankruptcy have been more vigorously attacked than the one which denies to creditors of a bankrupt partnership the right to participate in the estate of an insolvent member, until his individual creditors have been satisfied; see Story on Partnership § 382, Burdick's Law of Partnership, p. 273, Pollock's Digest of the Law of Partnership, p. 146, but the rule is well established in the law, and, with logical strictness, it has been applied even to cases where the partnership assets were insignificant, Ex parte *Peake* (1814) 2 Rose 54, and where they were consumed in the costs of the proceeding Ex parte *Kennedy* (1852) 2 De G. M. & G. 228. Where, however, there are no partnership assets at all and all the members are insolvent this strictness is relaxed and partnership creditors are allowed to share pari passu with the individual creditors.

At common law partnership creditors had priority over individual creditors in partnership assets and equal rights with them in individual assets, while individual creditors were subordinated to partnership creditors in partnership assets. The bankruptcy rule is an attempt to equalize the rights of these sets of creditors, and it has received earnest support in principle by several courts. *Rodgers* v. *Meranda* (1857) 7 Oh. St. 179. There has been no general concurrence in any one of the reasons advanced, however, and it seems that the explanation now most generally accepted is that the rule is not founded on principle, but was adopted for convenience, and was perpetuated to preserve uniformity in the decisions. In re *Wilcox* (1899) 94 Fed. 84. The exception to it seems to be a purely arbitrary limitation and without any justification which would not destroy the rule in its whole extent; but whatever may be said of the general rule, the exception is in strict accord with the common law rights of the parties, and few courts have refused to admit it along with the general rule, while in several jurisdictions the rule has been repudiated and the common law rights of the parties allowed to prevail as they do under the exception. *Camp* v. *Grant* (1851) 21 Conn. 41.

The application of the anomalous rule and its illogical though well-settled exception seem to be the explanation of a recent case in the District Court for the Western District of New York. In re *Janes* (1904) 128 Fed. 527. The Bankruptcy Act of 1901, U. S. Comp. St. 1901, p. 3424, provides in terms that the assets of the individual shall go to his separate creditors and partnership assets to partnership creditors, and that each class shall be entitled to the surplus from the other estate; but this court holds, in accordance with the common law doctrine, that where there are no assets of the bankrupt partnership and the members are insolvent the partnership creditors may share equally with the individual creditors. In any other light than that furnished by the course of the decisions before the bankruptcy act contained any express provision on the question, the decision would

seem to be an entirely unjustifiable limitation on the rule declared in the statute and logically repugnant to that rule; but on the principle of interpreting statutes under the guidance of the common law, the court would seem properly to require an explicit declaration from the legislature before abandoning the exception.

THE DESTRUCTION OF MUNICIPAL CORPORATIONS WHERE CONTRACT OBLIGATIONS ARE THREATENED.—The courts seem very cautious in conceding that the obligations of contracts can be impaired by legislative action, yet since the case of *Meriwether* v. *Garrett* (1880) 102 U. S. 472, it appears to be settled that the legislature has this power when it is incidental to the abolition of a municipal corporation. Being but a part of the machinery employed in carrying on the affairs of the State, *Laramie Co.* v. *Albany Co.* (1873) 112 Mass. 200, a municipal corporation is necessarily under the sole control of the legislature, and it would be a usurpation of legislative functions for the courts to attempt to supervise that control. Only the Constitution can fix the limits of legislative activity. The power of taxation has frequently been held to be a governmental function and within the control of the legislature. It is held that this power can be controlled by contract so as to be within the protection of the constitution, *Von Hoffman* v. *City of Quincy* (1866) 4 Wall. 535; but it seems to be recognized that this is an anomalous line of decisions, and the broad proposition that the State cannot surrender control of its inherent powers of government has been frequently affirmed. Cooley's Const. Lim. 7th ed. 395. It would seem therefore that unless a contract with a municipal corporation can be brought within the decisions on the power of taxation its obligations cannot be protected by the Constitution from the free exercise of legislative discretion, and that if no relief for creditors is provided by the legislature the courts can give none.

This seems to have been the reasoning and the decision in *Merriwether* v. *Garrett*, and it seems necessarily to involve a power in the legislature to impair the obligation of a contract, though as in a recent case, Ex parte *Folsom* (1904) 131 Fed. 496, the courts have frequently suggested that there can be no such power. A distinction, however, has been drawn between the total annihilation of a municipal corporation and a mere change in its form and powers. Where it has been merged with another corporation its debts follow and the merged corporation is responsible for them. *Mobile* v. *Watson* (1886) 116 U. S. 289. So also if the old corporation continues to exist the legislature cannot relieve it of its debts or prevent their enforcement if there are officers and machinery enough to act, *Wolff* v. *New Orleans* (1880) 103 U. S. 358, and this was found to be the result in the principal case, though the officers authorized to act were primarily officers of another corporation. But if, as in the *Merriwether* case, the corporation has been so completely absorbed back into the State as to leave no machinery or powers on which the court may attack its decree, it would seem that creditors can hold the private property of the corporation and that beyond this they are helpless. The feudal idea of a vested right in the exercise of the powers of government has not found favor in our courts.